



Information UPDATE

Wisconsin Department of Public Instruction/Elizabeth Burmaster, State Superintendent/P.O. Box 7841/ Madison, WI 53707-7841

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TO: District Administrators, CESA Administrators, CCDEB Administrators,
Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Carolyn Stanford Taylor, Assistant State Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: Results of 2002-2003 Onsite Compliance Reviews of Local Educational Agencies

During the 2002-2003 school year, the Department of Public Instruction (DPI) conducted onsite compliance reviews of 73 local educational agencies (LEAs). Also, DPI conducted follow-up corrective action plan (CAP) verification visits in LEAs reviewed during the 2000-2001 school year. The purpose of these activities was to ensure correct implementation of certain requirements of the Individuals with Disabilities Education Act (IDEA) and state law. This bulletin reports common errors found by the department's reviews of LEAs' implementation of specific legal requirements and offers guidance relating to their implementation. LEAs were cited for an implementation error when repeated errors were found. Repeated errors may indicate a need to be addressed through staff training or a need to change an LEA policy or procedure.

Child-Find Notice

Requirement. At least annually, the LEA must inform parents and persons required to make referrals under state law about the agency's referral and evaluation procedures. Also, before any major child-find activity, the local educational agency must give notice to parents of its procedures to protect the confidentiality of personally-identifiable information used to meet special education requirements. The notice must include:

- a description of the children on whom personally-identifiable information is maintained, the types of information sought, the methods used to gather the information (including the sources from whom information is gathered), and the uses to be made of the information;
- a summary of the policies and procedures followed regarding storage, disclosure to third parties, retention, and destruction of personally-identifiable information;
- a description of all of the rights of parents and children regarding this information, including rights under the Family Educational Rights and Privacy Act (FERPA) of 1974 and its implementing regulations; and
- a description of the extent the notice is given in the native languages of the various population groups in the LEA.

The notice of confidentiality procedures must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the LEA of the activity.

Finding. During the 2002-2003 school year, the department found five LEAs failed to meet this requirement. This represents a significant improvement from the previous year when 14 LEAs failed to meet the requirement. Most LEAs failing to meet the requirement did not publish a notice including all of the

The Wisconsin Department of Public Instruction does not discriminate on the basis of sex, race, religion, age, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

required content. The department has developed a sample notice that may be adapted for use. It is also available in Spanish and Hmong. The notices may be found at:

http://www.dpi.state.wi.us/dpi/dlsea/een/form_int.html.

Procedures for Accepting and Processing Referrals

Requirement. Licensed LEA staff and others named in s. 115.777(1)(a), Wis. Stats., who reasonably believe a child is a child with a disability have a duty to refer the child to the LEA for an IEP team evaluation. Each LEA must establish written procedures for accepting and processing these referrals. The referral procedures must address referrals from school staff, parents, and others in the community. Because referral procedures are not included in DPI's *LEA Model Policies and Procedures*, each LEA must develop its own procedures.

LEAs use various models of early and ongoing collaboration and assistance. Some LEAs use "teacher assistance teams" or "building consultation teams" to develop interventions. Such interventions should be initiated early to address the educational needs of children when they first experience difficulties in school. The department recognizes the value of such efforts and is funding a statewide project to promote early ongoing collaboration and assistance. More information about this project can be found at:

<http://www.cesa1.k12.wi.us/>.

Pre-referral interventions may not delay the LEA's accepting and processing special education referrals. The LEA's procedures cannot require a referring person to obtain the permission, approval, or agreement of others before the LEA accepts a referral. Further, the procedures cannot require a person who has formed a belief that a child is a child with a disability to defer a referral pending the outcome of pre-referral interventions.

Finding. Some LEAs have not established written procedures for accepting and processing referrals. Others with such procedures require a referring person to obtain the agreement of a team or require a series of educational interventions before a referral will be accepted. Some LEA policies require one or more individuals to review the referral before it reaches the individual designated to accept referrals. Such a policy may result in the referral being impermissibly delayed. Some policies do not address referrals from parents and individuals in the community who are required to make referrals. There is significant progress in addressing this requirement. The percentage of LEAs cited annually on this requirement has declined by almost two-thirds since 2000-2001.

Timely Notice

Requirement. An LEA must provide a child's parents with a written notice of its intent to evaluate or re-evaluate the child a reasonable time before it initiates the child's evaluation or re-evaluation. The first step in the evaluation process is a review of existing evaluation data on the child by the individualized education program (IEP) team participants to identify what additional data, if any, are needed to complete an evaluation or re-evaluation. Therefore, the child's parents must receive a notice of the evaluation or re-evaluation before the IEP team begins to review existing evaluation data on the child. Transmittal of a properly completed Form A-2 or A-6 of the DPI Sample Forms to the child's parents a reasonable time before the review meets this requirement. These forms can be accessed at:

http://www.dpi.state.wi.us/dpi/dlsea/een/form_int.html.

Finding. A number of LEAs failed to provide the child's parents with the required notice before the IEP team began its review of existing evaluation data to identify what additional data, if any, are needed to complete an evaluation or re-evaluation. Some LEAs documented case reviews completed by problem-solving teams (teacher assistance teams, building consultation teams) prior to referral for special education, instead of IEP

team reviews to determine whether additional evaluation data was needed to complete the IEP team evaluation. Other LEAs conducted IEP team reviews to identify what additional data, if any, were needed to complete an evaluation or re-evaluation, but mailed notices of evaluation (forms A-2 or A-6) after conducting the review.

Requirement. An LEA must provide a child's parents prior written notice of a change in the provision of a free appropriate public education (FAPE) to the child or of a change in educational placement. The notice must be sent so the parents receive it a reasonable time before the LEA starts to implement a revised IEP or begins a new placement for the child. Forms I-16 or I-17 of the DPI Sample Forms, when properly completed and sent timely with a copy of the IEP, will satisfy the notice requirements.

Finding. After reviewing and revising IEPs, some LEAs failed to provide notices of placement to parents before the implementation dates of revised IEPs. Therefore, parents were not provided with prior written notices of IEP changes. This situation occurred because annual meetings to review and revise IEPs were conducted too close to IEP one-year anniversary dates. Parents received the written notices about the revised IEPs in the mail after the changes were implemented.

Reviews of Existing Evaluation Data Prior to Completing Evaluations

Requirement. The IEP team, including the parent, is required to review existing evaluation data on the child and identify what additional data, if any, are needed to complete an evaluation or re-evaluation. The law does not require a meeting for this purpose. At a minimum, the IEP team includes the child's parents, at least one special education teacher, at least one regular education teacher (if the child is or may be participating in regular education), and a LEA representative. All of these individuals must participate in the review of existing evaluation data.

Finding. Results of 2001-2002 and 2002-2003 compliance reviews suggest continued improvement in involving parents in reviewing existing evaluation data. There has been significant progress since 2000-2001. The percentage of LEAs cited in 2002-2003 is half that cited in 2000-2001. LEAs continue to be cited frequently for other requirements relating to the review of existing evaluation data. Four of the ten most frequently cited errors in 2002-2003 relate to the existing evaluation data review. LEAs were frequently cited for failing to include regular education teachers and principals who served as LEA representatives in reviews. Further, LEAs did not properly document that special education teachers and LEA representatives participated in reviewing existing data prior to the IEP team evaluation meeting. Form I-1 of the DPI Sample Forms may be used to document the date each participant was contacted, the data reviewed, and each participant's input.

Considering Existing Data at the IEP Team Evaluation Meeting

Requirement. As part of an initial evaluation or a re-evaluation, the IEP team participants must review existing evaluation data on the child at the IEP team evaluation meeting. This information includes previous interventions and the effects of those interventions.

Finding. Some LEAs documented that IEP team participants reviewed previous interventions at IEP team meetings but failed to document the team reviewed the effects of those interventions.

Present Level of Educational Performance (PLOEP)

Requirement. The PLOEP statement must include baseline data corresponding to each of the measurable annual goal statements. If test scores (e.g., grade-equivalent or percentile scores) are used, they must be presented in a manner understandable to all, including parents. The law also requires a PLOEP statement address how the child's disability affects the child's involvement and progress in the general curriculum (the curriculum taught to nondisabled students) or, for preschool students, how the disability affects the child's participation in appropriate activities. "Appropriate activities" refers to age-relevant developmental abilities or milestones typically developing children of the same age would be performing or would have achieved. The IEP team's determination of how each child's disability affects involvement and progress in the general curriculum is a primary consideration in the development of the IEP. The PLOEP statement provides a basis for determining what accommodations the child needs in order to participate in the general curriculum.

Finding. Many PLOEPs do not include baseline information from which to measure progress on annual goals. Inadequate baseline data in PLOEPs was the most frequently cited error in onsite compliance reviews during 2001-2002 and 2002-2003. The results of the department's 2001-2002 and 2002-2003 reviews show significant improvement in describing the effects of the child's disability on progress and involvement in the general curriculum or, for preschoolers, how the disability affects the child's participation in age-appropriate activities. The percentage of LEAs cited annually for this error has declined by almost two-thirds since 2000-2001.

Measurable Annual Goals, Benchmarks, and Short-Term Objectives

Requirement. Each IEP must include a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the child's needs that result from the child's disability. The annual goal statement should address needs to enable the child to be involved in and progress in the general curriculum and to meet other educational needs that result from the child's disability. An annual goal statement is measurable and includes a level of attainment the child can be reasonably expected to achieve at the end of 12 months. Benchmarks describe the amount of progress the child is expected to make within specified segments of the year. Short-term objectives break the skills described in the annual goal into discrete components that are measurable intermediate steps. An IEP team may use either benchmarks or short-term objectives or both.

Finding. Some IEPs do not include measurable annual goal statements with specific levels of attainment children reasonably can be expected to achieve at the end of 12 months. The annual goals are not 12-month goals; rather, they are multi-year or lifetime goals, e.g., "improve reading" or "exhibit age-appropriate behavior." Further, the associated benchmarks or short-term objectives do not include expected levels of attainment. The construction of annual goals addressing behavior has been particularly difficult. An instructional module was developed to assist in writing IEPs to meet the behavioral needs of students and to provide examples of how to state goals positively. It may be accessed at:

<http://www.dpi.state.wi.us/dpi/dlsea/een/doc/fbaiepintr.doc>

IEP Services

Requirement. The IEP must include a statement of the special education and related services, including speech and language pathology and counseling when they are needed for the child to benefit from special education. The IEP must also include a statement of the supplementary aids and services and program modifications or supports for school personnel that will be provided for the child. The amount of services must be stated in the IEP so the level of the LEA's commitment of resources is clear. If it is inappropriate to state the amount of service by stating an amount of time, the IEP may describe the circumstances under which the service is needed. For example, if a student requires oral administration of tests, the IEP may state "tests in English and social studies to be administered orally" or "all tests at an instructional reading level

above sixth grade to be administered orally." Also, the IEP must include the anticipated frequency, location, and duration of the services. The location of services generally refers to the type of environment that is the appropriate place for the provision of the service, e.g., "resource room" or "regular classroom."

Finding. Some IEPs do not include either clear statements of the amount of services or the frequency of services. IEPs indicate services will be provided "as needed." Such statements do not make clear the LEA's level of commitment of resources. This description was commonly found for supplementary aids and services and program modification or supports for school personnel. This error was seen with the use of modification checklists, which were appended to IEPs. The 2002-2003 onsite compliance review results show significant improvement from 2001-2002 in describing the frequency and amount of special education. The 2002-2003 results strongly suggest continuing improvement in describing the location (type of environment) for the provision of supplementary aides and services. The percentage of LEAs cited in 2002-2003 is less than half of 2000-2001. There has also been a significant decline in the number of LEAs cited for failing to make counseling available as a related service. No LEAs were cited during 2002-2003 for this error.

Participation in the Regular Education Environment and the General Curriculum

Requirement. Another area of confusion revealed by the department's reviews relates to the requirement to include in the IEP an explanation of the extent, if any, to which the child will not participate in the regular education environment and in the general curriculum. Each of these issues must be considered by the IEP team and addressed in the IEP. For example, a child may be full time in the regular education classroom, but receive a replacement curriculum full time, instead of receiving the general curriculum. Conversely, a child may be removed to a special education resource room and during that time still be taught in the general curriculum, perhaps using different strategies, texts, or methods of presentation.

The IEP team must address both the curriculum and the environment. The general curriculum is the common core of subjects or curriculum areas adopted by the LEA or by schools within the LEA that applies to all children within each general age grouping from preschool through secondary school. The IEP team must decide whether the child will be expected to accomplish the same curriculum goals as the nondisabled students within the school. If the child will not be expected to do so, the extent to which the child will not participate in the general curriculum must be described in the IEP. There is a place to document a child's participation in the general curriculum in the department's model forms on Form I-11. The regular education environment is an instructional grouping with nondisabled peers (regular classroom or other setting). If the child will not participate full time in the regular education environment, the extent of the removal from the regular education environment must be determined and clearly stated in the IEP. There is a place to include an explanation of the extent to which the child will not participate in the regular education environment on the department's model forms on Form I-14 (2).

Finding. Some IEPs do not contain statements clearly distinguishing between the extent of the child's nonparticipation in the regular education environment and the extent of nonparticipation in the general curriculum. In some IEPs the extent to which the child will not participate in the regular education environment is unclear. Some of these IEPs explain why the child needs to be removed from the regular education environment (form I-14) but do not include the amount of removal in the explanation or elsewhere.

Transition to Post-secondary Life

Requirement. Beginning at age 14 (or younger if determined appropriate by the IEP team) and annually thereafter, the IEP must include a statement of transition service needs focusing on the student's courses of study needed to prepare for a successful transition to post-secondary life. An explanation of this requirement is found in an appendix to the IDEA regulations at 34 CFR 300, Appendix A, question 11, page 12,474. The regulations can be accessed on the Internet at: http://ideapolicy.org/IDEA%20'97/pmp_idea_97.htm.

To meet the requirement the IEP team must determine what instruction and educational experiences are needed to assist the student to prepare for transition to post-secondary life. The statement of transition service needs in the IEP should relate directly to the student's goals beyond secondary school and show how planned studies are linked to these goals. For example, one student is interested in studying computer programming after high school while another student needs to learn to live independently in the community. The statement in the first student's IEP would indicate the student will take courses in computer technology to prepare him to attend technical college. The other student's IEP would state the student will have instruction in skills of daily living in order to reach the goal of living independently in the community after high school.

Finding. Some statements of transition service needs do not identify courses of study. Others identify courses of study, but how the planned studies are related to students' post-secondary goals is unclear. Some statements do not include post-secondary goals. In 2000-2001, the statement of transition service needs was the requirement most frequently cited error. Since then, there has been some improvement. While the percentage of LEAs cited for the error has declined each year, much improvement is still needed. The department is addressing this requirement and other transition requirements through a statewide transition project funded by IDEA discretionary funds. Information about the project can be found at: <http://www.wsti.org/wsti.cfm>.

Placement Determined At Least Annually

Requirement. The educational placement of a child with a disability must be determined at least annually. Therefore, an IEP team must meet to determine a child's educational placement within one year of the last IEP team meeting to determine the child's educational placement.

Finding. Some LEAs failed to ensure IEP teams met at least annually to determine children's educational placements. LEAs erred by arranging meeting dates based upon the dates of notices of placement, rather than the dates of the last IEP team meetings to determine placements. Twenty-three percent of LEAs were cited in 2001-2002. The 2002-2003 onsite compliance reviews results have improved. Twelve percent of LEAs were cited in 2002-2003.

Reporting Progress of Children with Disabilities to Parents

Requirement. The law requires the parents of a child with a disability be informed of their child's progress at least as often as parents of nondisabled children. Further, the law requires the parents be informed of: (1) the child's progress on IEP annual goals and (2) the extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year. Descriptions of progress such as "emerging" or "making progress" alone do not meet the requirement, because they do not address the sufficiency of the progress.

Finding. Some LEAs erred in addressing this requirement by sending home grades in subject areas on report cards that do not address progress on annual goals or the sufficiency of the progress. Other LEAs informed parents periodically about progress on annual goals, but failed to include whether the progress was sufficient

to enable the child to achieve the goals by the end of the year. Some LEAs provided mid-quarter regular education progress reports, but did not provide proper mid-quarter IEP annual goal progress reports.

2003-2004 Compliance Activities

The department has completed the fifth year of a six-year onsite compliance review cycle. During the first half of the 2003-2004 school year, the final year of the six-year cycle will be completed. This cycle has focused on procedural compliance. We are now moving toward a Continuous Improvement and Focused Monitoring System (CIFMS) that will incorporate the most effective elements of continuous improvement and focused monitoring as described by the Office of Special Education, U.S. Department of Education. The purpose of this new system is to achieve positive results for children with disabilities in Wisconsin while ensuring continued compliance with the procedural requirements set out by state and federal law. Elements will include:

- required LEA self-assessment of procedural requirements,
- data analysis and improvement planning,
- implementation of improvement strategies,
- identification of priority areas to examine for procedural compliance and results, and
- focus on areas in greatest need of improvement.

Beginning with the 2003-04 school year, all LEAs will be required to conduct an annual self-assessment of their implementation of special education procedural requirements. LEAs will also engage in data analysis and improvement planning through their Special Education Plans (SEPs). Data retreats will be offered to train school personnel to use data to drive the improvement process for students with disabilities. During the second half of the school year, a new onsite review process will be piloted in geographically diverse districts of small, medium, and large sizes.

Questions about Continuous Improvement and Focused Monitoring System may be directed to Donna Hart-Tervalon, Assistant Director of Special Education, at 608-266-1781. Questions about the 2002-03 findings may be directed to Elliot Weiman at 608-266-3648.

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This information update can also be accessed through the Internet:

<http://www.dpi.state.wi.us/dpi/dlsea/een/bulindex.html>